

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Amendment to the
Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation

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) WT Docket No. 95-157
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To: The Commission

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COMMENTS OF DCR COMMUNICATIONS, INC.

William R. Richardson, Jr.
Lynn R. Charytan

WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6455

Attorneys for DCR Communications, Inc.

November 30, 1995

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SUMMARY

DCR is a small, minority and woman-owned business that intends to operate a number of PCS systems if it is a successful bidder in the C block PCS auction. If DCR is a successful licensee, it will be required to compete with several A and B block licensees who will have had a significant headstart in initiating service. The Commission's efforts to encourage those early A/B licensees to relocate the systems of microwave incumbents expeditiously will help to eliminate this headstart and will thus assist C block licensees in bringing meaningful competition to the PCS market.

DCR supports the Commission's cost-sharing plan, which provides incentives for early PCS licensees to relocate microwave incumbents, while ensuring that the rights of relocators, subsequent PCS licensees, and microwave incumbents are protected.

TABLE OF CONTENTS

	<u>Pages</u>
SUMMARY	i
A. The Cost-Sharing Formula	2
B. Compensable Costs	4
C. Adjacent Channel Interference	5
D. Timing of Reimbursement Obligation	6
E. Installment Payments	8
F. Good Faith and Compensable Costs	9
CONCLUSION	11

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COMMENTS OF DCR COMMUNICATIONS, INC.

DCR Communications, Inc. ("DCR") respectfully submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter.^{1/}

DCR is a small, minority and woman-owned business that intends to operate a number of PCS systems if it is a successful bidder in the upcoming C block PCS auction.^{2/} If it is a successful bidder, DCR will be competing with a number of A and B block licensees who will have already had a significant headstart in initiating service. Encouraging those early licensees to relocate the systems of microwave incumbents expeditiously is thus of major significance to DCR.

The Commission has taken commendable steps to provide incentives for early PCS licensees to relocate microwave

^{1/} NPRM, FCC 95-426 (released Oct. 13, 1995).

^{2/} On November 27, 1995, the Commission accepted DCR's applications to bid in the C block auction.

incumbents and to ensure that the process works fairly for all involved. DCR submits these comments in response to the Commission's specific proposals.

A. The Cost-Sharing Formula

DCR agrees that the "public interest is served by requiring PCS licensees that benefit from the relocation of a microwave link to contribute to the costs of that relocation."^{3/} As the Commission notes, a mandatory cost-sharing plan "would significantly enhance the speed of relocation by . . . creating incentives for PCS licensees to negotiate system-wide relocation agreements with microwave incumbents."^{4/} Such a plan will benefit all PCS operators as well as the public interest in faster and more efficient deployment of PCS services, thereby promoting the congressional objective of encouraging "the development and rapid deployment of new technologies, products and services for the benefit of the public."^{5/}

Cost sharing would be especially beneficial to small business PCS licensees. The Commission has recognized that the substantial headstart of the A/B licensees places C block licensees "at a . . . competitive disadvantage in the CMRS market vis-a-vis existing wireless carriers such as the A and B block

^{3/} NPRM, ¶ 23.

^{4/} Id. ¶ 24.

^{5/} 47 U.S.C. § 309(j)(3)(A).

winners, cellular and Specialize Mobile Radio (SMR) carriers."^{6/} By ensuring partial and sometimes full reimbursement of costs, cost-sharing may encourage A/B licensees to "relocate an entire system, rather than singling out links that interfere solely with their own operations."^{7/} Providing incentives for A/B licensees to clear entire systems, including those links that would affect C block licensees, could thus help to ameliorate the significant headstart that currently exists. By having access to cleared frequency and market blocks, C block licensees (and other subsequent PCS licensees) would be able to initiate service more quickly.

However, DCR agrees with the Commission's proposal to use a cost-sharing formula under which the "initial PCS relocater should always be required to pay the largest share of the expenses."^{8/} The initial relocater is likely to be the only licensee to benefit from relocation for some period before subsequent licensees enter the field, and it should therefore pay the largest share of the cost. The formula also will serve "as an incentive [for the relocater] to negotiate the lowest possible relocation costs."^{9/} The C block licensee generally will not have

^{6/} Sixth Report and Order, FCC 95-301, ¶ 6 (released July 18, 1995), stay dissolved sub. nom. Omnipoint Corp. v. FCC, No. 95-1374 (D.C. Cir. Sept. 28, 1995).

^{7/} NPRM, ¶ 32.

^{8/} Id. ¶ 31.

^{9/} Id.

participated in the A/B licensee's relocation negotiations, and there is no way for such later licensees to ensure that the agreed-upon cost is fair. DCR believes that if the relocater is required to shoulder the largest share, it will seek to obtain the fairest relocation cost.

DCR also agrees that the \$250,000 (plus \$150,000 for a tower) reimbursement cap proposed by the Commission^{10/} is a fair representation of actual relocation costs. A cap will ensure that subsequent licensees, who played no part in the relocation negotiations, contribute an amount that reflects what the actual costs should have been, regardless of what deal was reached. The cap chosen by the Commission will also guarantee that the relocater is fairly compensated for actual relocation costs.

B. Compensable Costs

DCR agrees with the Commission that "premium payments should not be reimbursable."^{11/} The fact that the relocater is willing to make a premium payment to clear the spectrum or market area quickly reflects the increased value that the relocater places on rapid relocation. In other words, the relocater has calculated the value of rapid relocation to its business plan, which it will enjoy before subsequent licensees enter the area. It is thus entirely reasonable for the relocater to shoulder the cost of such premium payments alone; subsequent licensees who did

^{10/} Id. ¶ 42-43.

^{11/} Id. ¶ 37.

not enjoy the benefit of early relocation should not be forced to pay for it. If there are a number of licensees about to enter the field at the same time, they can voluntarily agree to divide premium payments between themselves in order to induce early relocation.^{12/}

C. Adjacent Channel Interference

The Commission has requested comment on two issues regarding adjacent channel interference: (1) If a licensee relocates an incumbent in its market area but outside its frequency block that would have caused its system only adjacent-channel interference, should it receive full reimbursement?^{13/} (2) Should a subsequent licensee be required to reimburse a relocater for a relocated link that would have caused only adjacent-channel interference (rather than co-channel interference) to the subsequent licensee?^{14/}

DCR believes that it would be unwise to minimize the significance of adjacent-channel interference in order to "simplify administration of the cost-sharing plan." Adjacent-channel interference can be just as detrimental to system

^{12/} DCR supports the Commission's proposal to allow reimbursement for A/B licensee relocation costs incurred since April, 1995, as it would be unfair to penalize early PCS licensees for reaching agreements with incumbents rapidly. However, DCR seeks clarification that reimbursement for those relocation costs similarly would be limited to the direct cost of providing comparable facilities and exclude premium payments.

^{13/} Id. ¶ 34.

^{14/} Id. ¶ 56.

throughput as co-channel interference. Accordingly, both the relocater in question (1) and the subsequent licensee in question (2) would receive a genuine and valuable benefit from the relocation of an incumbent that would have caused adjacent-channel interference. Adjacent-channel interference is not necessarily difficult to detect or predict. APC's FAST technology, which detects such interference, is commercially available, and there are similar methods of analyzing adjacent-channel interference. Where such interference would have caused a deleterious effect on the PCS licensee's system, it should be treated in the same manner as co-channel interference for reimbursement calculations and obligations.

In response to the Commission's more general request for comment with regard to whether TIA Bulletin 10-F is the appropriate standard to use for determining interference,^{15/} DCR believes generally that this standard was developed specifically to determine PCS-to-microwave interference, and it would be sensible to use it for purposes of the Commission's cost-sharing plan.

D. Timing of Reimbursement Obligation

The Commission has requested comment concerning the triggering event requiring a subsequent licensee to pay the relocater under the cost-sharing formula.^{16/} DCR fully supports

^{15/} Id. ¶ 52.

^{16/} Id. ¶ 58.

the Commission's tentative proposal that reimbursement should not be required until "the time that [the subsequent licensee's] operations would have caused interference to the relocated link."^{17/} This is an essential provision, because licensees that are able to meet their buildout and system needs without creating interference that would have interfered with the incumbent's link should be rewarded rather than penalized. Thus, if a licensee is able to build a system that avoids creating interference by using APC's or some other frequency avoidance technology, it should not be required to pay for relocation that it would not ultimately need.

The same principle should apply to a licensee that has not fully built out its system, even if it is not using interference avoidance technology. Only when the licensee has built out its system to the point where interference is or would have been created should relocation cost-sharing be triggered. Such a licensee would have been able to coexist with the actual microwave incumbent, had it not been relocated, during that initial no-interference period.

Payment should not be due at the time the PCS licensee begins testing its system.^{18/} Any interference created at this time would be minimal, and might be immediately eliminated in response to the testing results. Thus, payment should be due

^{17/} Id.

^{18/} Id.

only when the licensee initiates commercial operations. Accordingly, a PCS licensee should be required to contact the clearinghouse to determine its reimbursement obligations prior to initiating commercial service, but not prior to testing. It may be only after testing that the licensee would have completed frequency coordination requirements.^{19/}

E. Installment Payments

In the Fifth Memorandum Opinion, the Commission noted that "[i]ninstallment payments directly address the significant barriers that smaller businesses face in accessing private financing."^{20/} The installment payment plan that the Commission adopted for small businesses in the C block was expected to reduce the amount of private financing that small businesses would need both before and after the auction in order to compete effectively in PCS.^{21/} As the Commission has noted, its proposal to apply this same payment plan to the relocation cost-sharing

^{19/} DCR also seeks clarification that a PCS licensee that relocates a microwave link that is not in its frequency band or its market area and is thus entitled to 100 percent reimbursement should receive such reimbursement from (and turn its interference rights over to) the first PCS licensee to provide service (either in the frequency or the market area) that would have caused interference to the relocated microwave link. See id. ¶ 32. Thus, a licensee that provides subsequent service in the frequency or market area that would not have caused such interference would not be required to pay that reimbursement.

^{20/} 10 FCC Rcd 403, 458 (1994).

^{21/} Id.

obligations of C block licensees will similarly "ease the burden of cost-sharing for these entities."^{22/}

Relocation costs may in some instances be quite high, especially where there are a number of interfering links that must be cleared. In most instances, the relocater will be an A/B licensee, who will be better equipped to cover the initial costs of relocation than most C block licensees. Permitting C block licensees to pay their share of the relocation costs based on the same installment (and interest vs. principal) plan that applies to their license costs will allow these licensees to use their limited resources toward building and starting up their new systems. It will also allow these licensees the opportunity to begin to earn revenues, from which they can help pay relocation costs. Without substantial assets and preexisting revenues to draw on, C block licensees might have no other means of paying these costs. Thus, an installment payment plan will help realize meaningful and successful participation in the PCS market by small business licensees.

F. Good Faith and Compensable Costs

DCR fully supports the Commission's efforts to further define the "good faith" requirement during the mandatory negotiation period.^{23/} An incumbent that fails to accept an offer of comparable facilities, as further defined by the

^{22/} NPRM, ¶ 61.

^{23/} Id. ¶ 69.

Commission, should be deemed to be acting in bad faith unless it can prove otherwise.^{24/} Such clarification is necessary to protect PCS licensees from those incumbents that might otherwise abuse the negotiation process by repeatedly stalling, and thus hoping to obtain a higher payment. The Commission's definition of "comparable facilities" to encompass throughput, reliability and operating cost^{25/} is both necessary and appropriate. This definition gives the parties flexibility to negotiate terms that stress those factors that are most important in individual cases, but provide a framework that should help to alleviate unnecessary conflicts and complaints. DCR believes that the Commission should stress that a determination whether facilities are "comparable" will emphasize functionality and performance rather than an offer to provide identical equipment.

By defining and limiting "comparable facilities" in this way, the Commission will protect the interests of microwave incumbents, who can be sure that they will obtain a system that meets these prerequisites. The definition, and the requirement that a good faith offer of comparable facilities be accepted, also provide PCS licensees with security that the negotiation process will be a meaningful opportunity to reach an agreement with the incumbent rather than a long and frustrating period of disputes and unnecessary delay.

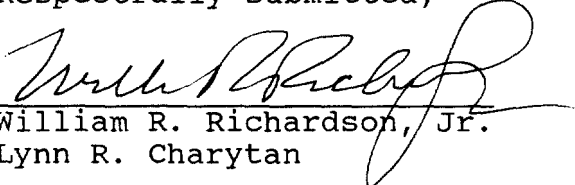
^{24/} Id.

^{25/} Id. ¶ 73.

CONCLUSION

DCR supports the Commission's efforts to bring more certainty and fairness to the microwave relocation process. The rights of incumbents, relocators, and subsequent licensees must be balanced. DCR supports the Commission's endeavor to achieve this balance, as outlined herein.

Respectfully submitted,


William R. Richardson, Jr.
Lynn R. Charytan

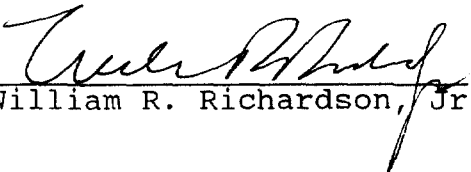
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6455

Attorneys for DCR Communications, Inc.

November 30, 1995

CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., hereby certify that I have this 30th day of November, 1995, caused to be delivered by hand delivery the foregoing Comments of DCR Communications, Inc. in Response to Notice of Proposed Rulemaking to the persons named on the following service list.


William R. Richardson, Jr.

Federal Communications
Commission

Michele Farquhar
Chief, Wireless Telecommunications
Bureau
Room 5002
2025 M Street, N.W.
Washington, D.C. 20554

Linda Kinney
Legal Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
Room 7130
2025 M Street, N.W.
Washington, D.C. 20554

International
Transcription
Service

ITS
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037